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**NLRB ADOPTS ALTERNATIVE PROCEDURE
IN REPRESENTATION ELECTION CASES**

The National Labor Relations Board has revised its rules to create, effective March 1, 2005, a new representation case procedure: the “Full Consent Election” Agreement. Under the new procedure, parties can agree that disputed pre-election and post-election issues will be resolved with finality by a Regional Director with no appeal to the Board.

This new rule permits parties to enter into a voluntary agreement waiving their right to Board review and designating the Regional Director to serve as the final authority in their case to resolve disputes arising during the period from the filing of a representation petition to the issuance of a certification of representative or certification of results. After a hearing, the Regional Director issues a final decision and certification with the same force and effect, in that case, as if issued by the Board. As adopted, Section 102.62(c) provides:

Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into an agreement providing for a hearing pursuant to sections 102.63, 102.64, 102.65, 102.66 and 102.67 to resolve any issue necessary to resolve the question concerning representation. Upon the conclusion of such a hearing, the Regional Director shall issue a Decision. The rulings and determinations by the Regional Director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the Regional Director shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to sections 102.69 and 102.70, except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

This new procedure presents a third voluntary method of informal adjustment for parties to choose. Previously, the Board made available to parties two types of consent procedures through which representation issues can be resolved without recourse to formal procedures – the “Stipulated Election” Agreement and the “Consent Election” Agreement.

- “*Stipulated Election*” Agreement – Under Section 102.62 (b), the parties decide that no pre-election hearing is necessary to resolve disputed issues necessary to conduct an election. Post-election challenges are decided by the Regional Director but can go to the Board on exceptions.
- “*Consent Election*” Agreement -- Under Section 102.62 (a), the parties stipulate to election details and authorize the Regional Director to decide with finality post-election objections and challenged ballot issues after a hearing. (The “*Full Consent Election*” Agreement makes both pre- and post-election issues subject to final disposition by the Regional Director.)

In announcing the rules change, NLRB Chairman Robert J. Battista and General Counsel Arthur F. Rosenfeld stated:

The new procedure is designed to offer the parties the ability to have a secret ballot Board-conducted representation election and still be able to expedite the resolution of all questions concerning representation. This is accomplished by allowing the parties to call upon the Board’s Regional Directors to provide neutral, expert and prompt decision-making which follows settled representation case law and the National Labor Relations Act. For those who wish to waive their right to appeal to the Board, the procedure provides yet another option available to the parties to fairly determine the wishes of the employees as to whether or not they desire to be represented by a union.

Additional information concerning the new “Full Consent Election” Agreement can be obtained at www.nlr.gov, by contacting the Information Officer in any Regional Office directly, or by calling the NLRB toll-free information number: 1-866-667-NLRB (TTY number 1-866-315-NLRB).

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